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Holding up Half the Sky But Not Allowed to Hold the Ground: Women's Rights to Inherit and Own Land in Hong Kong and the People's Republic Of China

BY NORA E. SHERIFF*

I. Introduction

This Note compares the rights of women to inherit and own land in the New Territories in Hong Kong to those rights of women in the short-lived Soviet Republic Jiangxi in China. It examines the historical underpinnings of the differences and similarities and contemplates the inevitable changes to those rights as Hong Kong and China evolve into one nation with two systems. The Note begins by briefly surveying general perceptions regarding rights in Great Britain, Hong Kong and China. It then lays out the international treaties that affect women's rights and the participation of both Hong Kong and China in those treaties. This is followed by an in-depth discussion of the internal laws and realities of area and concludes with a comparative analysis.

II. General Perceptions

Great Britain is generally perceived as an advanced, civilized, Western society. A signatory of the major human rights treaties, it is well regarded in the international arena as a promoter of liberal democracy.¹ Great Britain's actions toward Hong Kong have

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1. Great Britain has signed both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

arguably been consistent with its liberal reputation.²

Hong Kong has also been widely considered to be a free society,³ with a world-renowned capitalist system.⁴ With a population of approximately 6.3 million, Hong Kong is the world's eighth largest trading economy.⁵ Considering Hong Kong's economic prosperity⁶ and common law legal system,⁷ the assumption that Hong Kong is a liberal territory with equal rights for all follows naturally.⁸ However, Hong Kong was tightly controlled by the British⁹ to the exclusion of

2. "A much celebrated British 'gift' to Hong Kong has been the rule of law, including a British-style Common Law system with an independent and impartial judiciary supposedly delivering fair and equal justice to all." Ming K. Chan, *The Imperfect Legacy: Defects in the British Legal System in Colonial Hong Kong*, 18 U. PA. J. INT'L ECON. L. 133, 133 (1997). However, Great Britain explicitly excluded Hong Kong from the commitments it made to people in its colonies via the European Convention on Human Rights; natives of Hong Kong had no right to live in the United Kingdom, there was not universal suffrage, Chinese was not an official language of the colony, and there was no full enjoyment of freedom of speech, assembly or association. See Yu Ping, *Will Hong Kong Be Successfully Integrated into China? A Human Rights Perspective*, 30 VAND. J. TRANSNAT'L L. 675, 680 (1997).

3. "[M]any factors have contributed to Hong Kong's remarkable development and success as . . . socially free . . . [A] most crucial and indispensable component of this success is undoubtedly the territory's legal system and framework which has provided stability and certainty to support Hong Kong's growth and transformation." Chan, *supra* note 2, at 156.

4. See Kristin Choo, *Zero Hour For Hong Kong*, 83 A.B.A.J. 70, 70 (1997) (describing Hong Kong as "one of the crown jewels of the modern world economy").

5. See *id.* at 71 ("Hong Kong has been best known as a paradise for doing business."); see also Ping, *supra* note 2, at 679.

6. "Although it is its last colony, Hong Kong is also the most prosperous British possession. Indisputably, it is the most industrialized and urbanized colony the world has ever seen. Next to Japan and Singapore, it has the highest per capita income in Asia." Anne S. Y. Cheung, *The Paradox of Hong Kong Colonialism: Inclusion as Exclusion*, 11 CAN. J.L. & SOC'Y 63, 66 (1996).

7. "The rule of law is definitely a prominent British legacy . . . and is rightly perceived as such by popular perception." Chan, *supra* note 2, at 155. But it has persuasively been asserted that "many of the worst examples of sex discrimination have been caused or perpetuated by the laws of Hong Kong or by government policies . . . [and] intervention in the market to the disadvantage of women." Carole J. Petersen, *Equalities as a Human Right: The Development of Antidiscrimination Law in Hong Kong*, 34 COLUM. J. TRANSNAT'L L. 335, 338-39 (1996).

8. "[F]ew would dare to argue that the British rule of law has throughout the past one and a half centuries of colonialism been genuinely fair, delivering equal justice to all, European or Chinese." Chan, *supra* note 2, at 156. But, "under the authority of the British government, Hong Kong for many years did not share the human rights protections bestowed upon the people of the United Kingdom. It can even be said that the British government had a bad reputation in so far as human rights for the Hong Kong people were concerned." Ping, *supra* note 2, at 679.

9. "It is easy to forget that Hong Kong still is another nation's colony. A relatively light touch on the part of British administration over the years obscured the

the native Chinese.¹⁰ Hong Kong, the business world's utopia, was not the even-handed dispenser of justice it appeared to be.¹¹ But the blame may not belong to Great Britain alone.¹²

Popular opinion generally views the People's Republic of China (P.R.C.), unlike Great Britain and Hong Kong, as having a very poor human rights record.¹³ One can simply point to the 1989 Tiananmen Square massacre, the mandatory one child policy, the P.R.C.'s treatment of Tibet, all highlighted by the yearly debates in the United States in Congress over China's most-favored-nation status. Indeed, the statement that the P.R.C.'s human rights development is "still at an initial stage" rings true.¹⁴ However, it was the National People's Congress that passed Hong Kong's first bill of rights, incorporated into the 1990 Basic Law legislated by the P.R.C.¹⁵

III. General Women's Rights in Hong Kong and China

The chronicle of the women's rights movement is strikingly short when compared to that of the human rights movement, and even

fact that they retained effective control on just about every freedom enjoyed by the colony." Choo, *supra* note 4, at 71; *see also* Ping, *supra* note 2, at 679 ("Social stability had been the top priority of the British colonial government.").

10. "Political participation of local Chinese was immaterial until the late 1980s. In Hong Kong's three most important branches of government, almost all top positions historically were occupied by non-Chinese, primarily English." Ping, *supra* note 2, at 679.

11. There existed "serious lapses and significant gaps in the Common Law system as practiced by the colonial regime." Chan, *supra* note 2, at 155; *see also* Richard Klein, *Law and Racism in an Asian Setting: An Analysis of the British Rule of Hong Kong*, 18 HASTINGS INT'L & COMP. L. REV. 223, 223 (1995) ("The British portrayal of themselves in these final days of governance, as the promoters and champions of democracy confronting the antidemocratic obstacle of the P.R.C., is a distortion of the very nature of the British rule."); Michael C. Davis, *Human Rights and the Founding of the Hong Kong Special Administrative Region*, 34 COLUM. J. TRANSNAT'L L. 301, 314 (1996) ("Britain's long exercise of colonial rule without democracy diminished any moral foundation upon which to effectively assert any late pleas on Hong Kong's behalf.").

12. "[T]he failure of the colonial authorities to provide a democratic political system was directly attributable, at least since 1958 if not before, to Chinese intervention." Peter Wesley-Smith, *The Future of Hong Kong: Not What It Used to Be*, 30 VAND. J. TRANSNAT'L L. 421, 440 (1997).

13. "Those searching for evidence of respect for human rights, especially civil and political rights, in mainland Chinese official practices search in vain." Davis, *supra* note 11, at 317.

14. *Id.* at 317-18.

15. "The British could have freely made such a human rights law many years ago." Ping, *supra* note 2, at 682.

more so when compared to human history, considering that women's treatment has been universally poor.¹⁶ Seven years after Great Britain gained control of Hong Kong in 1842, women in New York were enabled to legally buy real estate, while in England in 1870, employed, married women were permitted by law to spend their earnings as they pleased.¹⁷ Hong Kong and China in the 1800s stand in stark contrast: women and children had no rights and were actually considered property that could be sold.¹⁸ Under Chinese law, men could legally sell their sisters or female children due to the Confucian family system's subordination of women and children.¹⁹

The sale of girls, or mui tsai (little sisters), was considered by the colonial rulers to be ingrained in paternalistic Chinese customs and, despite the fact that the Qing dynasty in China outlawed the practice in 1910, the Hong Kong government declined to criminalize such sales, even going so far as to refuse to monitor the mui tsai trade. It was not until 1923 that the Female Domestic Service Ordinance prohibited future mui tsai sales, but the ordinance only mandated sufficient food and clothing and prohibited overworking or ill treatment for those mui tsai already enslaved.²⁰ The mui tsai trade was not wiped out for a long time. In fact, "[t]he Hong Kong Museum of History has property transfer documents for Hong Kong girls dated as recently as the 1950s."²¹

An old Chinese proverb says "ten fine girls are not equal to one crippled boy,"²² manifesting the traditional view that female children and adults are practically worthless.²³ This view still seems to prevail,

16. "For virtually all of recorded history, women got a raw deal in most societies. It is only in the past few decades that a proportion of the planet has attempted to make sure that women are treated fairly." Nury Vittachi, *Losing Out in the Battle of the Sexes*, S. CHINA MORNING POST (H.K.), Oct. 24, 1998, at 7. Unfortunately for women in Hong Kong and China, the struggle for equality has only just begun. See *id.*

17. See *id.*

18. See *id.*

19. See *id.*

20. See Klein, *supra* note 11, at 242-43.

21. Vittachi, *supra* note 16.

22. *Id.* Vittachi goes on to point out that if one considered the ratio of abandoned girls to abandoned boys at Chinese orphanages today, the saying should say "99 girls are just about equal to one disabled boy." *Id.*

23. See *id.* This attitude has had extremely disturbing consequences. Currently, if children under fourteen in China lined up in a row of boys and a row of girls, there would be "a line of twenty million spare little boys stretching into the distance." *Id.*

despite efforts by both international treaties and domestic groups.²⁴

IV. International Treaties

International Treaties, such as the Universal Declaration of Human Rights,²⁵ the International Covenant on Civil and Political Rights (ICCPR),²⁶ the International Covenant on Economic, Social and Cultural Rights (ICESCR),²⁷ and the Convention for the Eradication of Discrimination Against Women (CEDAW),²⁸ address the gender inequalities prevalent in most societies.²⁹ The ICCPR and ICESCR, ratified by Great Britain, have been extended to include Hong Kong, despite the fact that China and Hong Kong are not signatories. But that coverage and protection are dubious.³⁰

The ICCPR prohibits discrimination in three places. Article 2, paragraph 1 requires state parties to respect the rights of all those in their jurisdictions "without distinction of any kind, such as race, colour, [or] sex"; Article 3 mandates that the parties "undertake to

24. "[T]he small number of women chosen [as Hong Kong advisor to China appointed by the P.R.C.] would seem to indicate that China places little importance on women and gender-related issues in Hong Kong." Linda Yeung & Linda Choy, *Out of 186 HK Advisors Appointed by China, Only 16 Women Have Been Selected*, S. CHINA MORNING POST (H.K.), May 1, 1995, at 23.

25. The Universal Declaration of Human Rights is non-binding but carries moral weight. See George Edwards, Address at the University of Hong Kong, School of Law, June 5, 1998.

26. International Covenant on Civil and Political Rights, 6 I.L.M. 368 (1967) [hereinafter ICCPR]. Unfortunately, the enforcement mechanism for this covenant has been described as "fairly weak . . . [T]he implementation of the covenant mostly relies on the self-compliance of the state parties concerned." Ping, *supra* note 2, at 693. The Human Rights Committee, in Geneva and New York, hears reports by states on implementation. See Edwards, *supra* note 25. They also consider reports by non-governmental organizations such as Amnesty International and various lobbying groups. See *id.*

27. International Covenant on Economic, Social and Cultural Rights, 6 I.L.M. 360 (1967) [hereinafter ICESCR].

28. The CEDAW was ratified by Great Britain in 1986, and had been extended to cover a number of British territories, but "at the request of the Hong Kong government, the convention was not extended to cover Hong Kong." Petersen, *supra* note 7, at 364.

29. See ICCPR, *supra* note 26; see also ICESCR, *supra* note 27.

30. "Although Hong Kong incidentally benefited from the United Kingdom's ratification of the ICCPR and ICESCR in 1976, the people of Hong Kong have long been barred from many rights embodied both in British laws and in these two covenants." Ping, *supra* note 2, at 679. The Human Rights Committee has declared that "once a people . . . [are] under protection of the ICCPR, such protection cannot be denied to them by virtue of the mere dismemberment of that territory or its coming within the jurisdiction of another territory." *Id.* at 691.

ensure the equal rights of men and women to the enjoyment of all civil and political rights set forth in the [ICCPR]"; and Article 26 protects against discrimination in any areas not specified within the covenant, providing "equal protection of the law . . . [and that] the law shall prohibit any discrimination on any ground such as . . . sex."³¹ The ICESCR provides similar protection for economic, social and cultural rights.³²

V. Hong Kong: Internal Laws and Realities

Prior to 1842, Hong Kong's legal system was the standard dynastic law of the Qing dynasty, the statutes of which, in theory at least, applied throughout the empire.³³ In practice, each area was governed by local custom.³⁴ The customary law was fluid and flexible,³⁵ changing from place to place,³⁶ until British colonists halted its development.³⁷

Between 1842 and 1895, Great Britain took control of Hong Kong,³⁸ Kowloon,³⁹ and the New Territories.⁴⁰ Interestingly, it was

31. ICCPR, *supra* note 26, arts. 2, 3, 26 at 369, 375; see Petersen, *supra* note 7, at 351.

32. ICESCR, *supra* note 27, at 361.

33. Chinese law has been held by the British courts in both Hong Kong and the United Kingdom to "refer to the Qing dynasty law and customs as they existed in 1843 with such 'modifications in the custom and in the interpretation of the law as have taken place in Hong Kong since that period.'" Cheung, *supra* note 6, at 73. The unfortunate implication here is that the courts cannot look beyond Hong Kong to other Chinese societies, such as mainland China or Taiwan, to see how these customs have developed.

34. See Professor Peter Wesley-Smith, Address at the University of Hong Kong, School of Law, June 3, 1998.

35. "The development of customary law. . . [is usually] a natural development, a response to society." Cheung, *supra* note 6, at 81.

36. "[C]ivil law was based on 'custom' which varied in each locality[;] . . . [e]ven within one single province, customs were not uniform." *Id.* at 73.

37. "The imposition of a cut-off date for customary law [here, 1843,] compromises its flexibility[;] . . . inhibiting later possible changes, and leading to a 'hardening of the arteries of development.'" *Id.*

38. See Wesley-Smith, *supra* note 34; see also Cheung, *supra* note 6, at 69 ("[W]hen the Treaty of Nanking was ratified on 29 August 1842, Hong Kong was formally ceded to Britain.").

39. See Wesley-Smith, *supra* note 12, at 423 (referring to a "small strip of territory on the opposite mainland [i.e., opposite to the island of Hong Kong,] known as Kowloon, and Stonecutter's Island [that] were ceded in 1860").

40. "The last acquisition of the New Territories, comprising rural hinterland and sea boundaries enclosing the ceded portions, was achieved through a ninety-nine year lease in 1898." *Id.* Because the New Territories were not ceded but leased to Great

actually before the Treaty of Nanking was signed that Great Britain first proclaimed that the indigenous people would continue to be governed by customary Chinese law.⁴¹ Unfortunately, the end result was to freeze Chinese customary law; "the legislation which [has] provided for the application of local custom has had the unintended effect of stopping the evolution of the custom itself."⁴² This was Britain's regular *modus operandi* in its colonies.⁴³ It actually appeared to be a gesture of deference to the indigenous conventions.⁴⁴

But by 1966, Chinese customary law had gone from ruling every area of Chinese Hong Kong's life (except criminal behavior), to being applied only to the extent that British law was inapposite.⁴⁵ The remaining areas of applicability for customary Chinese law were family law and testacy.⁴⁶

In 1898, when British rule was extended to the New Territories, Chinese customary law forbade female inheritance of land.⁴⁷ In 1905, the British administration passed the New Territories Ordinance, of which Section 15 stated that "the courts shall have the power to

Britain, this bolstered the argument for applying customary law to that area: Why make the indigenous people change everything for a finite period of time? See Petersen, *supra* note 7, at 339.

41. "On 1 February 1841, [Captain Charles Elliott] issued the first proclamation that 'the natives of the island of Hong Kong and all natives of China thereto resorting, shall be governed according to [the] laws and customs of China (every description of torture excepted) by the elders of the villages, subject to [the] control of a British magistrate.'" Cheung, *supra* note 6, at 68-69. The preservation of customary law served several functions; it bolstered the local reception of colonial rule and helped retain administrative control. See *id.* at 70.

42. C. K. Lau, *A Question of Free Speech vs. Disorder*, S. CHINA MORNING POST (H.K.), Aug. 10, 1994, at 15. This is highlighted by the fact that the sale of young girls was outlawed in mainland China decades earlier than in Hong Kong.

43. "The dual approach of establishing an enclave of British society, which was regulated by English colonial legislation, while the local population was left primarily to its own devices, was entirely consistent with the British style of colonial rule." Cheung, *supra* note 6, at 69.

44. "Prima facie, the carving out of an exclusive area of law under the so-called protected or reserved realm of Chinese customary law was an act of respect for local customs and practice." *Id.* at 65. "With hindsight, the policy of the early British administration of respecting local custom was well intentioned." C. K. Lau, *Councilors Today Face the Wrath of Villagers When They Visit the New Territories*, S. CHINA MORNING POST (H.K.), Mar. 26, 1994, at 19.

45. See Cheung, *supra* note 6, at 72.

46. See generally Wesley-Smith, *supra* note 12.

47. "Chinese customary law . . . required that land be passed down the male line." Petersen, *supra* note 7, at 339.

recognize and enforce any Chinese custom or customary right.”⁴⁸ This ordinance gave custom, which forbade female inheritance of land, the force of law.⁴⁹ Furthermore, the accumulated judicial decisions in Hong Kong regarding Chinese customary law established that developments outside of Hong Kong were irrelevant to the analysis of Chinese customary law.⁵⁰ Thus, the fact that this aspect of customary law had changed in other Chinese communities, such as the P.R.C., did not deter the Hong Kong government from enforcing traditional customary discrimination against women.⁵¹

Then, although male owners of land used to be able to will their land to females (albeit a rare occurrence), in 1971, the Probate and Administrative Ordinance exempted that land subject to Chinese customary law. This meant that a male landowner's will leaving his property to a female could no longer be probated and subsequently enforced under the ordinance.⁵²

During the 1980s, the British and Chinese governments agreed that when the ninety-nine year lease for the New Territories expired in 1997, Hong Kong and Kowloon would be returned as well. The Joint Declaration⁵³ guarantees that Hong Kong's capitalist, common law system will remain in place for fifty years following the handover in 1997.⁵⁴ As a Special Administrative Region of the P.R.C., Hong

48. Lau, *supra* note 44; see also Petersen, *supra* note 7, at 340.

49. See Lau, *supra* note 44.

50. See *id.* “Gradually, the interpretation of customary law by English judges and common law courts transformed and even created a new understanding of the law. The preservation of customary law had the paradoxical effect of ousting the local narrative.” Cheung, *supra* note 6, at 63. Because of this, “the system [now] is alien in origin to both traditional Chinese customary law and the Qing code adopted when Hong Kong first came under British rule.” Chan, *supra* note 2, at 156 n.3.

51. “Ironically, this aspect of Chinese law and custom was reformed long ago in other Chinese societies, including the P.R.C., but it was preserved in Hong Kong (and indeed made tougher) by colonial legislation.” Petersen, *supra* note 7, at 339.

52. See *id.* at 342.

53. The Joint Declaration was “a twelve point plan detailing China's intended policies towards Hong Kong.” Mark F. McElreath, *Degrading Treatment From East Africa to Hong Kong: British Violations of Human Rights*, 22 COLUM. J. TRANSNAT'L L. 331, 335 (1991).

54. Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the P.R.C. on the Question of Hong Kong, Dec. 18, 1984, U.K.-China, 1985 Gr. Brit. T.S. No. 26 (cmd. 9543), 23 I.L.M. 1366 (Annex 1) [hereinafter Joint Declaration]; see also Choo, *supra* note 4, at 71. But the value of this may be questioned, for “Hong Kong may be said to be the perfect embodiment of paradoxes. It has inherited the law and order of the British rule without the libertarian dimension of the Common Law tradition.” Cheung, *supra* note 6, at 64; see also McElreath, *supra* note 53, at 335; Davis, *supra* note 11, at

Kong has been promised a high degree of autonomy.

The discrimination against women and female inheritance were carried forward during the handover negotiations. The Joint Declaration Annex III, pertaining to land rights, specifically states:

[I]n the case of [the New Territories] where the property was on 30 June 1984 held by . . . a person descended through the *male* line from a person who was in 1898 a resident of an established village in Hong Kong, the rent shall remain unchanged so long as the property is held by that person or by one of his lawful successors in the *male* line.⁵⁵

The Basic Law, in Article 39, was supposed to incorporate the rights specified in the Joint Declaration, and ensure that all restrictions meet the requirements of the ICCPR and the ICESCR.⁵⁶ However, Article 40 of the Basic Law mandates that “[t]he lawful traditional rights and interests of the indigenous inhabitants of the ‘New Territories’ shall be protected by the Hong Kong Special Administrative Region.”⁵⁷

When the negotiations were taking place, the P.R.C. was still in a moderately eager phase of its domestic reform process, which was characterized by a high degree of pragmatism and confidence.⁵⁸ Hong Kong residents, per the Basic Law, would ostensibly have the same guaranteed rights as they had had under the ICCPR and the ICESCR.⁵⁹

Article 8 of the Basic Law discusses sources of law.⁶⁰ Article 160 establishes that previous Hong Kong laws are not applicable if they are inconsistent with the Basic Law.⁶¹ Hong Kong is still allowed to

311 (The Joint Declaration’s “guarantees are remarkably coherent for an international human rights treaty between countries on opposing ends of the political spectrum.”).

55. Joint Declaration, *supra* note 54 (emphasis added).

56. See Davis, *supra* note 11, at 315.

57. BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE’S REPUBLIC OF CHINA, adopted Apr. 4, 1990, by the Seventh National People’s Congress of the People’s Republic of China at its Third Session, art. 40 [hereinafter BASIC LAW]; see also David Chu Yu-Lin, Editorial, S. CHINA MORNING POST (H.K.), Apr. 17, 1994, at 17.

58. See Davis, *supra* note 11, at 311.

59. See Ping, *supra* note 2, at 697.

60. BASIC LAW, *supra* note 57, art. 8.

61. *Id.*, art. 160; see also Professor Yash Ghai, Address at Hong Kong University School of Law, June 2, 1998 (maintaining that this has been strictly interpreted to declare many human rights laws void, although the laws were consistent).

make its own laws, but Article 158 permits the P.R.C.'s Standing Committee to interpret them.⁶² Furthermore, Hong Kong's judiciary must defer to P.R.C. party policies.⁶³

Despite the legal assurances in the Joint Declaration and the Basic Law regarding human rights, after the Tiananmen Square massacre in 1989, Hong Kong residents and the Hong Kong government became worried about the protection of human rights.⁶⁴ This concern was bolstered by pressure from the international community.⁶⁵ Britain started to consider reforming the political situation in Hong Kong and instituting real human rights protections.⁶⁶

The passage of the Bill of Rights was part of Britain's attempt to raise Hong Kong's confidence after the massacre.⁶⁷ At this point, Britain finally seemed to accept progress towards liberation and democracy.⁶⁸ Hong Kong's Bill of Rights, when passed in 1991, established—on paper—equality for the sexes.⁶⁹ The P.R.C. at this point was the ultimate ratifying body for the Bill of Rights.

The Bill of Rights mandates that "[t]he rights recognized in this Bill of Rights shall be enjoyed without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."⁷⁰ Article 22 states:

62. BASIC LAW, *supra* note 57, art. 158; see also Joseph W. Dellapenna, *The Lesson of the Triple Twisted Pine: Plum Blossoms on Mountain Peaks and the Future of Hong Kong*, 30 VAND. J. TRANSNAT'L L. 637, 659, 664 (1997) (asserting that this results in "interpretation [by a] . . . body not trained in the law, and composed of people who, to the extent they are familiar with legal thinking at all, think in civil law modes rather than common law modes").

63. "Acts of decisions of the Beijing authorities could not be questioned before a court in Hong Kong, regardless of how obviously such acts of decisions might violate the Constitution of the P.R.C., the Joint Declaration or the Basic Law." Dellapenna, *supra* note 62, at 665.

64. "Demands for a Hong Kong Bill of Rights had been made prior to 1989. But it was not until after the Tiananmen massacre that the proposal was endorsed by the government." Petersen, *supra* note 7, at 350.

65. See Davis, *supra* note 11, at 318.

66. See Ping, *supra* note 2, at 679; see also Choo, *supra* note 4, at 71.

67. See Chan, *supra* note 2, at 152.

68. See Davis, *supra* note 11, at 311. However, Hong Kong's first antidiscriminatory law, Sex Discrimination Ordinance 67, was not enacted until 1995. See Petersen, *supra* note 7, at 337.

69. See Petersen, *supra* note 7, at 350; see also Davis, *supra* note 11, at 319.

70. Cap. 383, Laws of H.K. Bill of Rights 1991, pt. 2, art. 1 (emphasis added).

[a]ll persons are equal before the law, and are entitled without any discrimination to the equal protection of the law.... [T]he law shall prohibit discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as ... sex.⁷¹

Essentially, these are identical provisions to the ICCPR and ICESCR, which were the models used by the government to draft the Bill.⁷² By using the same terms, Great Britain and Hong Kong hoped for continuity in the protection of human rights through 1997.⁷³ Utilizing the same terms also aided in calming Chinese objections.⁷⁴ The Chinese government initially criticized the Bill of Rights on the grounds that it would adversely affect the Basic Law.⁷⁵ However, as noted above, Hong Kong's first Bill of Rights ultimately was passed by the P.R.C., not Great Britain.

The Hong Kong courts have interpreted the Bill of Rights to be binding only on the government and public authorities, not private individuals.⁷⁶ This means that only governmental discrimination against women is considered to be prohibited by the Bill of Rights, not discrimination by private individuals. And it is mainly private individuals, specifically male landowners or would-be landowners, who discriminate against a woman's right to own or inherit land: "Women are driven out of their homes on the death of their husbands or parents by male cousins who claim ownership of the property according to custom."⁷⁷

The judiciary also uses the same introspective analytical approach to the Bill of Rights as it does in interpreting and applying customary law.⁷⁸ Despite the fact that Section Three of the Bill of

71. *Id.* art. 22 (emphasis added).

72. See Petersen, *supra* note 7, at 350.

73. See *id.* at 353.

74. See Davis, *supra* note 11, at 319; see also Petersen, *supra* note 7, at 350 ("[T]he main reason for choosing the ICCPR as the model was the fact that the Chinese government had already agreed in the Joint Declaration that the provisions of the ICCPR 'as applied to Hong Kong shall remain in force.'").

75. See Chan, *supra* note 2, at 152.

76. See Johannes M. M. Chan, *Hong Kong's Bill of Rights: Its Reception and Contribution to International and Comparative Jurisprudence*, 47 INT'L & COMP. L.Q. 306, 314 (1998).

77. Lau, *supra* note 44.

78. See Chan, *supra* note 76, at 314 (expressing disappointment that "international and comparative jurisprudence has exerted a relatively minor influence on the interpretation of the Bill of Rights").

Rights repeals "any legislation which is inconsistent with the Bill of Rights," the Hong Kong courts have been cautious and at times even scornful towards arguments based on the Bill of Rights.⁷⁹

Hong Kong's Bill of Rights has faced vocal opponents, primarily the Heung Yee Kuk, a male dominated group in the New Territories.⁸⁰ The Kuk started to lobby almost immediately for an exemption from the application of the Bill of Rights to the customary male privileges in the New Territories, specifically the government's Small House Policy and the male-only inheritance of land.⁸¹ The women's movement in Hong Kong had attempted to use the Bill of Rights (as well as the adjoining debate) to gain legal acknowledgement and ethical recognition for the right to equality.⁸² However, the Bill of Rights Ordinance was an ineffective tool for the women's movement.⁸³ The Bill of Rights did not affect the prohibition on female inheritance.⁸⁴

The Kuk argued vociferously that it was needless to alter the ordinance forbidding female inheritance, which had "served the New Territories 'so smoothly' for many years."⁸⁵ They and their supporters contended that the "spirit and letter of the Basic Law should be preserved; male inheritance of rural land was endorsed by the Joint Declaration and seconded by the Basic Law drafters."⁸⁶

One opponent of the bill claimed that the disparity in rights in the New Territories comes from complex historical circumstances particular to Hong Kong that will resolve themselves: "Time cures and the inheritance issue . . . will diminish as society develops. Sudden changes will do more harm than good."⁸⁷ The Kuk warned the government not to discount the displeasure of the New Territories

79. Johannes M. M. Chan, *The Hong Kong Bill of Rights: A Statistical Overview*, in *HONG KONG'S BILL OF RIGHTS—TWO YEARS BEFORE 1997*, 18 (George Edwards & Johannes M. M. Chan eds., 1995).

80. See Petersen, *supra* note 7, at 353.

81. See *id.*

82. See *id.* at 337.

83. See *id.* at 357 (stating that several factors contributed to the ineffectiveness of the Bill of Rights, including its inapplicability to private party disputes and the extremely high legal fees and other barriers to legal aid that made litigation of the right to inherit prohibitively expensive).

84. See *id.* at 359.

85. Justine Ferrari, *Kuk Puts Forward Property Plans*, S. CHINA MORNING POST (H.K.), Apr. 9, 1993, at 3.

86. Chu Yu-Lin, *supra* note 57.

87. *Id.*

residents.⁸⁸ Those opposed to the bill threatened violence and even called for the rape of female legislative councilor Christine Loh, an ardent supporter of the bill.⁸⁹ The police did nothing to the man who called for Loh's rape.⁹⁰

But the New Territories are no longer a distant region of the immense Chinese empire where the clan performed essential functions in keeping the family safe and integrating farming operations.⁹¹ Nor are they the rural farmland and walled villages of 1898.⁹² Today a sizeable portion of Hong Kong's population resides in the New Territories; the restrictions on female inheritance apply across the board to land, regardless of the owner's nationality or clan ties, even to land purchased by female property owners with their own funds.⁹³

The restriction resulted in many inequitable situations. For example, women still living with the clan in a village were not permitted to share the clan's property; but male members who had moved away long ago could still demand their legal share of the land.⁹⁴ Moreover, distant male relatives could claim inheritance rights and oust widows and female children.⁹⁵ These relatives had an obligation under traditional Chinese custom to let the widow and children continue living in the house. However, women in the New Territories have long protested that although male-only inheritance of land was stringently followed by Hong Kong laws and bureaucratic officials, the presumed advantages of women under the customary law were dealt with much more loosely, and were more similar to moral obligations that the male heir could disregard than enforceable rights.⁹⁶ The clan no longer takes care of the female members, as "women are driven out of their homes on the death of their husbands or parents by male cousins who claim ownership of the property according to custom."⁹⁷

88. See Fung Wai-Kong, *Loh Backs Land Rights Goal*, S. CHINA MORNING POST (H.K.), May 30, 1994, at 6.

89. See Lau, *supra* note 44.

90. See *id.*

91. See *id.*

92. See Petersen, *supra* note 7, at 341.

93. See *id.*

94. See Cheung, *supra* note 6, at 75.

95. See Petersen, *supra* note 7, at 340.

96. See *id.*

97. Lau, *supra* note 44.

One of the most persuasive grounds for invalidating the customary law is that these discriminatory practices against women were prohibited ages ago in other Chinese societies, namely mainland China.⁹⁸ However, as noted above, Hong Kong courts do not consider developments in other Chinese societies when interpreting and applying customary law.

In 1994, Hong Kong finally repealed the legal prohibition on female inheritance of land.⁹⁹ The bill was highly controversial.¹⁰⁰ The New Territory Land (Exemption) Bill passed, despite vehement opposition by the Kuk.¹⁰¹ The vast majority of Hong Kong residents (77%) were in favor of the equal inheritance bill.¹⁰² While the Kuk vowed to have the prohibition of female inheritance of land in the New Territories reinstated,¹⁰³ the New Territories Land (Exemption) Ordinance was not repealed by the Preparatory Committee Review in the P.R.C., despite the claims, similar to those made against the Bill of Rights, that it violates the Basic Law.¹⁰⁴

VI. China: Internal Laws and Realities

In 1949, the Chinese Communist Party took power and established the People's Republic of China.¹⁰⁵ Mao Zedong's first order on October 1, 1949, abolished all laws of all prior governments.¹⁰⁶ "According to the new regime, no law would be better than old law."¹⁰⁷ Since then, China has had several constitutions.¹⁰⁸ Further, China has gone from an intentional effort to destroy the budding legal establishment during the Great Proletarian

98. *See id.*

99. *See* Petersen, *supra* note 7, at 368; *see also* Judith Sihombing, *Chinese Customary Law in Hong Kong* (Nov. 1997) (paper delivered at Conference on Customary Land Rights in Kuchin, East Malaysia, on file with author).

100. *See generally* Petersen, *supra* note 7; *see also* Sihombing, *supra* note 99.

101. *See* Petersen, *supra* note 7, at 370-71. The Kuk's "bottom line that only men should be permitted to inherit land" did not sway the legislative council. *Id.*

102. *See* Jonathon Braude, *Confidence at 4-Year Low*, S. CHINA MORNING POST (H.K.), May 9, 1994, at 1; *see also* Lau, *supra* note 44.

103. *See* Petersen, *supra* note 7, at 372.

104. *See* No Kwai-Yan, *Law Giving Legco Power to Summon Officials Spared Axe*, S. CHINA MORNING POST (H.K.), Jan. 20, 1997, at 4.

105. *See* McElreath, *supra* note 53, at 333.

106. *See* Dellapenna, *supra* note 62, at 649.

107. *Id.*

108. *See generally* Ann Kent, *Waiting for Rights, China's Human Rights and China's Constitutions, 1949-1989*, 13 HUM. RTS. Q. 170 (1991).

Cultural Revolution of 1966 to 1976¹⁰⁹ to trying more recently to institute a legal system to enable it to reenter the global market and prevent a second cultural revolution.¹¹⁰ As a consequence of this recent initiative to establish the rule of law, China now has many uncodified statutes, a general part of a civil code, and a complex but rarely used judicial system.¹¹¹ Also, there is no American-style judicial review in Chinese law.¹¹²

China, unlike the West and Hong Kong's common law system, was never influenced by Roman law. China has none of the traditional Western characteristics of a legal system, e.g., an independent judiciary or an educated cadre of legal professionals.¹¹³ The rule of law has never been a part of Chinese culture.¹¹⁴ This fact has served to intensify the Chinese judiciary's susceptibility to traditional influences and its lack of a sense of responsibility to the rule of law.¹¹⁵ The Chinese ideal of collective responsibility is quite different from the western concept of individual rights.¹¹⁶

China's constitutions, it has been argued, are weak but they remain the most important obtainable key to its social and political customs and organizations and its prevalent ideals and goals.¹¹⁷ In China, the letter of the law is not necessarily substantively followed throughout the land.¹¹⁸ China's official constitution has no autonomous juridical power and does not bind the People's Congress.¹¹⁹ "The Constitution is better described as a 'statement of

109. See Dellapenna, *supra* note 62, at 648.

110. See *id.* at 650.

111. See *id.*

112. See Ping, *supra* note 2, at 684.

113. The P.R.C., despite having five times as many people, only has one-eighth the lawyers the United States does, and a mere 20% of all Chinese "legal workers" actually have legal degrees. See Dellapenna, *supra* note 62, at 650-52.

114. In fact, "except for the short-lived experiment of the legalists under the Chin dynasty in the third century B.C.E., China has always been a non-legal culture. The Chinese cultural tradition . . . knows only a narrow concept of 'law' . . . that is essentially one of naked power designed to preserve the state . . . more consistent with modern totalitarian concepts of law than western concepts." *Id.* at 645.

115. See *id.* at 652.

116. See *id.* at 645; see also Davis, *supra* note 11, at 318 (stating that China's traditions "emphasize sovereignty, subsistence, and the preeminence of collective over individual rights in the interest of economic development").

117. See Kent, *supra* note 108, at 177.

118. "In China, one must remember that reality does not always reflect the law." Tanya S. J. Selvaratnam, *Backseat Driver: Steering Chinese Women's Voices Through the 1990s*, 12 J.L. & POL. 93, 117 (1995).

119. See Choo, *supra* note 4, at 74.

policies' rather than binding law."¹²⁰

According to traditional Chinese philosophy, women are subordinate to men and occupy inferior positions.¹²¹ But there have been advocates for women in China since the latter part of the 19th century.¹²² Constitutional reformers and academics supported female emancipation, education, and the elimination of footbinding.¹²³ Women in China did receive the right to education and in some areas the right to vote in the early 1900s, although these rights were not acknowledged by the constitution or official policy as "equal with [the rights of] men."¹²⁴ However, the reformers and scholars debating and promoting women's rights did not address the deeper issue of China's patriarchal social systems and beliefs.¹²⁵

Women's liberation was a central part of the agenda of the Communist Party, and it had a strong impact on the Communist struggle for power.¹²⁶ Mao gave serious thought to the inequality of women in Chinese society and denounced the repressive domination of women by Chinese patriarchy.¹²⁷ Prior to Communist rule in China, usually only men held title to land.¹²⁸ During the 1930s, the Communist Party enacted a series of laws granting women rights in land ownership and marriage (explored in depth below), although these laws were later repealed by the male-dominated Party.¹²⁹ Also, the place of women in society developed into a political and civic issue, and statutes were enacted and campaigns begun to better women's condition.¹³⁰

In Jiangxi, over a period of six years from 1928 to 1934, a minimum of six land laws were formally enacted, in addition to over thirteen regulations and resolutions.¹³¹ Traditionally, in this area, only men were able to own land; the other family members could only

120. *Id.*

121. See Lucie Cheng, *Women and Class Analysis in the Chinese Land Revolution*, 4 BERKELEY WOMEN'S L.J. 62, 70 (1988).

122. See Selvaratnam, *supra* note 118, at 96.

123. See *id.* at 96-97.

124. *Id.*

125. See *id.*

126. See *id.*

127. See Cheng, *supra* note 121, at 67-68.

128. See *id.* at 67.

129. See Vittachi, *supra* note 16.

130. See Selvaratnam, *supra* note 118, at 97.

131. See Cheng, *supra* note 121, at 66.

request support from the land.¹³² Communist insurgents had established a Soviet Republic in the area.¹³³ Their experience became the basis for China's Land Reform of the 1950s.¹³⁴

In December of 1928, the Jiangxi Soviet Government stated that "all men *and women*, old and young, shall be entitled to *equal redistribution*," specifically mandating that the redistribution occur based on population and labor power, "regardless of age, *gender*, or class background."¹³⁵ In February of 1930, a later law mandated that dependents of landowners be allotted land if that was their only instrumentality of support; this was likely the first formal realization by the Communist Party that family members were not necessarily all equal.¹³⁶ The "willingness to distinguish the individual from the family was a major step by the Chinese Communist Party away from the traditional feudal patriarchal family."¹³⁷ This differentiation of women from their husbands and fathers bestowed upon those women a beneficial independent class status.¹³⁸ The later law's requirement that land be distributed on a population basis without including labor power let women get the same amount of land as men, whereas the earlier labor power consideration had disadvantaged women to the extent that women's labor, especially that of women with bound feet, was discounted—if counted at all.¹³⁹ At this point, land was "one of the few guarantees of economic independence for peasant women."¹⁴⁰

Unfortunately, this independent class status for women was short-lived, apparently because of strife in the Communist Party over the treatment of wealthier peasant women.¹⁴¹ Some Soviets continued to give women who were formerly dependent on wealthy landowners an individual allotment of land similar to that of common peasant women; these allotments were taken away in 1933 during the Land Investigation Drive and redistributed to poor peasants.¹⁴² Interestingly, there was a marked increase in interclass marriages

132. *See id.* at 69.

133. *See id.* at 62.

134. *See id.*

135. *Id.* at 68 (emphasis added).

136. *See id.* at 69-70.

137. *Id.*

138. *See id.*

139. *See id.* at 70.

140. *Id.* at 71.

141. *See id.*

142. *See id.* at 74.

during this time, which leads to the inference that landowners were marrying their daughters to poor peasants in order to retain or obtain land.¹⁴³ Due to the significant influence of familial bonds in rural China, this custom would be logical and reasonable from the male landlord's point of view.¹⁴⁴ The persistence of patriarchy enabled men to continue to use women to maintain or increase their wealth.

The simple rules of 1930 became complex regulations in 1931 and 1932 under which women in landowning and rich peasant families were excluded from the redistribution process.¹⁴⁵ But then in 1932 and 1933, "it was recognized that individuals within a family may have different relations to production and their living conditions may be very dissimilar."¹⁴⁶ It was difficult to redistribute land to women because they did not own land to begin with and their labor power, once again a consideration, was hard to calculate.¹⁴⁷ Distinctions on the basis of full or partial labor which were disadvantageous to women, especially those with bound feet, were grounded in the necessary physicality of agriculture.¹⁴⁸ This distinction based on physical strength was discarded in favor of a differentiation between essential and non-essential labor, where obviously a differentiation of women's labor from the labor of children and the elderly was being made.¹⁴⁹

The Communist Party recognized the inequality of the full/partial distinction and tried to proactively address it by using a different criterion for land distribution. However, by 1933, the family was still the basic determinant of class and therefore of land distribution, as well as the basic unit of production.¹⁵⁰ By February of 1933, the classifications of labor exempted domestic labor and non-productive tasks like bookkeeping and trade.¹⁵¹ But women could work in the fields and be counted as productive labor, and thereby receive an equal allotment of land. Land and the rights inuring to land were the primary motivating factors behind women's support for

143. *See id.* at 82.

144. *See id.*

145. *See id.* at 77.

146. *Id.*

147. *See id.*

148. *See id.* at 78.

149. *See id.*

150. *See id.* at 79.

151. *See id.*

the Communist Revolution.¹⁵²

The Party Leadership saw collectivization as the only solution to China's agrarian problems. Because arable land was limited, redistribution on an individual basis meant that each rural resident, regardless of gender or age had an equally small share of land. If each were to cultivate that land individually, productivity would not increase. Therefore, although land redistribution by law was to be on an individual basis, in reality, the household was the unit of production. Land deeds showed the names of all members of the family to indicate that each member owned a share of the land, but this was not easy to implement.¹⁵³

There are many reports of transgressions of Soviet marriage laws that entitled women to take their share of land upon divorce.¹⁵⁴ Apparently, as long as the economy was based on the household as the unit of production, because of China's strong patriarchal tradition it was practically impossible to allot to women a different class identity than that of their male counterparts.¹⁵⁵

In 1948, the All China Women's Federation (ACWF) was organized to represent and advocate for women.¹⁵⁶ Although the ACWF had as its primary function the protection of women's rights and interests, it was limited by the government's pressure to look at women's issues from a Marxist-Leninist point of view.¹⁵⁷

The 1950 Marriage Law and the Agrarian Reform Law formally accepted women's rights to marry, divorce, and own property.¹⁵⁸ The 1954 constitution conferred judicial equality on women.¹⁵⁹ After the Land Reform was complete, numerous women petitioned the courts for favorable land settlement upon divorce; inheritance cases were also appealed to the courts by both men and women.¹⁶⁰ Arguably, these problems, with their dual economic and social connotations, partially motivated the Party's change from an economy based on the household to one based on collectivization; this occurred right after

152. *See id.* at 79-80.

153. *See id.* at 84.

154. *See id.*

155. *See id.*

156. *See Selvaratnam, supra* note 118, at 109.

157. *See id.* at 110.

158. *See id.* at 97.

159. *See id.*

160. *See Cheng, supra* note 121, at 84.

the Land Reform was completed.¹⁶¹

The evolution of the collective system turned women into economic producers in the workplace.¹⁶² "Collective ownership of rural land began in 1956 when the PRC established the Advanced Agricultural Cooperatives, which 'owned' the rural land throughout the PRC."¹⁶³ The goal of the Land Reform was not only to redistribute land more equally, but also to develop a production capacity to support the Revolution.¹⁶⁴

But then the Cultural Revolution switched back from the collective system to the household.¹⁶⁵ "Between 1979 and 1983, . . . Chinese collective farms distributed land use rights to individual households, thereby creating a nation of family farms."¹⁶⁶ Despite the claim that land was distributed on an "egalitarian basis,"¹⁶⁷ this did not advance or improve women's liberation, primarily because the household unit was inherently discriminatory to women.¹⁶⁸ Women were increasingly subordinated to family hierarchies where a woman was considered to be of lesser value than her husband and father.¹⁶⁹

The 1982 constitution for the P.R.C. established, on paper, equal rights for all Chinese citizens; in Chapter 2, titled "Fundamental Rights and Duties of Citizens," Article 33 proclaims, "All citizens . . . are equal before the law. Every citizen enjoys the rights . . . prescribed by the Constitution and the law."¹⁷⁰ Moreover, the constitution also explicitly states that women have equal rights: "Women in the People's Republic of China enjoy equal rights with men in all spheres of life, political, economic, cultural and social, and family life."¹⁷¹ In 1992, a Women's Rights Protection Law was enacted, but this law differentiates women from men along biological lines—an obvious step back from equal treatment.¹⁷²

161. *See id.* at 84-85.

162. *See* Selvaratnam, *supra* note 118, at 97.

163. Tim Hanstad & Li Ping, *Land Reform in the People's Republic of China: Auctioning Rights to Wasteland*, 19 LOY. L.A. INT'L & COMP. L.J. 545, 545 n.1 (1997).

164. *See* Cheng, *supra* note 121, at 84.

165. *See* Hanstad, *supra* note 163; *see also* Selvaratnam, *supra* note 118, at 97.

166. Hanstad, *supra* note 163.

167. *Id.*

168. *See* Selvaratnam, *supra* note 118, at 97.

169. *See id.*

170. XIANFA [CONSTITUTION] ch. 2, art. 33 (1982).

171. *Id.* art. 48.

172. *See* Selvaratnam, *supra* note 118, at 99.

VII. Comparative Analysis

In both Hong Kong and China, women have been traditionally prohibited from owning or inheriting land. Customary law mandated male inheritance of ancestral land.¹⁷³ Women, it was argued, were prohibited from inheriting the clan land in order to safeguard the ancestral land and clan holdings, for women would marry outsiders and leave.¹⁷⁴ Men, on the other hand, supposedly stayed and safeguarded the integrity of the clan holdings.¹⁷⁵ In both modern Hong Kong and the P.R.C., these reasons for maintaining the traditional ways are no longer valid. In Hong Kong, many male landowners sell their land to outsiders and divide the profits among the male family members.¹⁷⁶ And in China, a goal of the Revolution was to end the feudal structure. The discriminatory Hong Kong law was based on outdated economic reasoning—protection of the clan source of support and food. The new reformed law is based in the current economic reality of what really occurs in the New Territories—while land is still a source of wealth and support, the clan no longer supports women as it once did, and the male members also leave. In China, the land law reforms were driven by politics, specifically a desire for the support of women for the Communist Party. The political support given by Chinese women was arguably motivated by their desire to change their economic and social positions.

In Hong Kong, the traditional prohibition of female inheritance was preserved by the freezing of Chinese customary law.¹⁷⁷ Reform of that tradition did not come until the 1990s. But in China, official attempts were made beginning in the 1930s to change that tradition. First, women's equality was made the subject of scholarly debate and later a goal of the Communist Revolution, and laws were passed (albeit briefly at first) giving women the right to own land. In the

173. See Ferrari, *supra* note 85.

174. See Cheung, *supra* note 6, at 75 (“[L]and ownership by women would mean devolution of the clan property.”).

175. See Petersen, *supra* note 7, at 340; see also Lau, *supra* note 44 (“[T]he amendment [to permit female inheritance of land] will break up clan-based land holdings and destroy the social fabric of the villages.”).

176. See Petersen, *supra* note 7, at 340.

177. See Lau, *supra* note 44 (“[In 1899,] Governor Blake issued a proclamation in Chinese stating that the landed and commercial interests of all inhabitants would be safeguarded and their usages and good customs would not be interfered with[;] . . . the early administration adopted a policy of leaving the New Territories as they had found it and respecting local custom.”).

P.R.C., the inequality was recognized over sixty years earlier than in Hong Kong (1930s versus 1990s). Chinese women in the 1950s had recognized judicial equality and legal rights to property. In Hong Kong, women's rights (or the lack thereof) were static: the government both in the Joint Declaration (Annex III) and the Basic Law (Article 40) provided for the conservation of the lawful traditional rights of the New Territories' indigenous residents.¹⁷⁸ Although these provisions do not expressly maintain the preclusion of women from these rights,¹⁷⁹ they do not challenge the inherent inequality of male inheritance.

Moreover, while the P.R.C. was trying to reform land distribution in the 1930s and 1950s and permitted women to own land and benefit from that ownership, in Hong Kong, women were still considered property to be sold, rather than individuals with rights to own property. The P.R.C. established a group dedicated to the protection of women's rights in the 1940s, but the Hong Kong government balked at even studying the possibility of inequality in the 1990s. The Hong Kong government was able to do this because of its undemocratic structure and focus on economic prosperity; it was a colony primarily run for big business interests and profits. It was not until the 1991 political campaigns that women's groups in Hong Kong began lobbying for women's rights, including property rights in the New Territories.

The situations in Hong Kong and China are similar in that it has been harder to effectuate reform in the rural areas. In the P.R.C., regardless of official declarations of women's emancipation, the complete liberation of women was and is difficult to achieve, especially in rural areas.¹⁸⁰ And in Hong Kong, one of the main arguments against the New Territories Land (Exemption) Ordinance was that it was a traditional rural area and should be left alone.

China and Hong Kong also both focused on the economic unit of production as the underlying concern and rationale for their laws. But China tried to proactively change the way it looked at the economics, varying the units of production and distribution despite a lack of change in the economic reality of production, which remained household based. Hong Kong, on the other hand, did not alter its assumptions, even though its economic reality had changed

178. See Petersen, *supra* note 7, at 353-54.

179. See *id.* at 354.

180. See *id.* at 97-98.

dramatically, women were independently productive in the economy, and the clan unit was becoming increasingly defunct.

VIII. Conclusion

In terms of the laws passed and official attempts by the governments to improve equality of land rights, the P.R.C. has been more advanced than Hong Kong, a long-time colony of western “liberal” Great Britain. Ironically, Hong Kong has been held up as a model for mainland China. Hong Kong certainly has been a model in terms of economic growth, but not in terms of equality for women.

Beneath the surface, both the P.R.C. and Hong Kong have been and remain unequal. In China, the increasing schism between women’s formal and actual equality was ignored as the government had to undertake economic reconstruction.¹⁸¹ After the Communist takeover, women gained considerably, both economically and ideologically.¹⁸² But unfortunately, despite official assertions that China’s recent marketization and political reforms have improved women’s situation,¹⁸³ women in China still do not have full equality in all areas.¹⁸⁴ In Hong Kong, rampant discrimination remains, and the new right to inherit is not a guarantee that women actually do inherit.

181. *See id.*

182. *See id.*

183. *See id.* at 102.

184. *See id.* at 95.
